

## § 2411.9

## 5 CFR Ch. XIV (1–1–12 Edition)

(ii) An estimated date on which the agency will complete action on the request.

(e) If any request for records is denied in whole or in part, the response required by paragraph (c) of this section shall notify the requester of the denial. Such denial shall specify the reason therefore, set forth the name and title or position of the person responsible for the denial, and notify the person making the request of the right to appeal the denial under the provisions of § 2411.10.

### § 2411.9 Business information.

(a) *In general.* Business information obtained by the Authority from a submitter will be disclosed under the FOIA only under this section.

(b) *Definitions.* For purposes of this section:

(1) Business information means commercial or financial information obtained by the Authority from a submitter that may be protected from disclosure under Exemption 4 of the FOIA.

(2) Submitter means any person or entity from whom the Authority obtains business information, directly or indirectly. The term includes corporations; State, local, and Tribal governments; and foreign governments.

(c) *Designation of business information.* A submitter of business information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under Exemption 4. These designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(d) *Notice to submitters.* The Authority shall provide a submitter with prompt written notice of a FOIA request or administrative appeal that seeks its business information wherever required under paragraph (e) of this section, except as provided in paragraph (h) of this section, in order to give the submitter an opportunity to object to disclosure of any specified portion of that information under paragraph (f) of this section. The notice shall either describe the business information re-

quested or include copies of the requested records or record portions containing the information. When notification of a voluminous number of submitters is required, notification may be made by posting or publishing the notice in a place reasonably likely to accomplish it.

(e) *Where notice is required.* Notice shall be given to a submitter wherever:

(1) The information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(2) The Authority has reason to believe that the information may be protected from disclosure under Exemption 4.

(f) *Opportunity to object to disclosure.* The Authority will allow a submitter a reasonable time to respond to the notice described in paragraph (d) of this section and will specify that time period within the notice. If a submitter has any objection to disclosure, it is required to submit a detailed written statement. The statement must specify all grounds for withholding any portion of the information under any exemption of the FOIA and, in the case of Exemption 4, it must show why the information is a trade secret or commercial or financial information that is privileged or confidential. In the event that a submitter fails to respond to the notice within the time specified in it, the submitter will be considered to have no objection to disclosure of the information. Information provided by the submitter that is not received by the Authority until after its disclosure decision has been made shall not be considered by the Authority. Information provided by a submitter under this paragraph may itself be subject to disclosure under the FOIA.

(g) *Notice of intent to disclose.* The Authority shall consider a submitter's objections and specific grounds for non-disclosure in deciding whether to disclose business information. Whenever the Authority decides to disclose business information over the objection of a submitter, the Authority shall give the submitter written notice, which shall include:

(1) A statement of the reason(s) why each of the submitter's disclosure objections were not sustained;

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(2) A description of the business information to be disclosed; and

(3) A specified disclosure date, which shall be a reasonable time subsequent to the notice.

(h) *Exceptions to notice requirements.* The notice requirements of paragraphs (d) and (g) of this section shall not apply if:

(1) The Authority determines that the information should not be disclosed;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600 (3 CFR, 1988 Comp., p. 235); or

(4) The designation made by the submitter under paragraph (c) of this section appears obviously frivolous—except that, in such a case, the Authority shall, within a reasonable time prior to a specified disclosure date, give the submitter written notice of any final decision to disclose the information.

(i) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of business information, the Authority shall promptly notify the submitter.

(j) *Corresponding notice to requesters.* Whenever the Authority provides a submitter with notice and an opportunity to object to disclosure under paragraph (d) of this section, the Authority shall also notify the requester(s). Whenever the Authority notifies a submitter of its intent to disclose requested information under paragraph (g) of this section, the Authority shall also notify the requester(s). Whenever a submitter files a lawsuit seeking to prevent the disclosure of business information, the Authority shall notify the requester(s).

### §2411.10 Appeal from denial of request.

(a) *Authority/General Counsel/Panel/IG.*

(1) Whenever any request for records is denied, a written appeal may be filed within thirty (30) days after the requester receives notification that the request has been denied or after the requester receives any records being

made available, in the event of partial denial.

(i) If the denial was made by a Regional Director or by the Freedom of Information Officer of the General Counsel, the appeal shall be filed with the General Counsel in Washington, DC.

(ii) If the denial was made by the Executive Director of the Panel, the appeal shall be filed with the Chairman of the Panel.

(iii) If the denial was made by the Solicitor or the IG, the appeal shall be filed with the Chairman of the Authority in Washington, DC.

(2) The Chairman of the Authority, the Chairman of the Panel or the General Counsel, as appropriate, shall, within twenty (20) working days (excepting Saturdays, Sundays, and legal public holidays) from the time of receipt of the appeal, except as provided in §2411.11, make a determination on the appeal and respond in writing to the requester, determining whether, or the extent to which, the request shall be granted.

(i) If the determination is to grant the request and the request is expected to involve an assessed fee in excess of \$250.00, the determination shall specify or estimate the fee involved and shall require prepayment of any charges due in accordance with the provisions of paragraph (a) of §2411.13 before the records are made available.

(ii) Whenever possible, the determination relating to a request for records that involves a fee of less than \$250.00 shall be accompanied by the requested records when there is no history of the requester having previously failed to pay fees in a timely manner. Where this is not possible, the records shall be forwarded as soon as possible thereafter, consistent with other obligations of the Authority, the Panel, the General Counsel or IG.

(b) If on appeal the denial of the request for records is upheld in whole or in part by the Chairman of the Authority, the General Counsel, or the Chairman of the Panel, as appropriate, the person making the request shall be notified of the reasons for the determination, the name and title or position of the person responsible for the denial, and the provisions for judicial review